

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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CLAUDIUS CHRISTOPHER,	:	
Plaintiff	:	
vs.	:	
	:	CIVIL NO. 11/1981
EDWARD PENN,	:	
Defendant	:	

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(Attorney for Plaintiff)

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MEMORANDUM OPINION
(February 5, 1983)

FEUERZEIG, J.

May a person to whom a jury awarded only nominal damages recover costs, including attorney's fees? The court believes he may.

Plaintiff Claudius Christopher sued defendant Edward Penn for assault and battery, and the defendant counterclaimed for past due rent. At trial, Christopher introduced records of emergency room treatment and receipts for the purchase of medication, all of which were alleged to be a result of the injuries he sustained at the hands of the defendant. The jury found that the defendant committed

an unprivileged assault and battery upon the plaintiff, but determined the damages that he suffered to have been only \$1.00.

Plaintiff now seeks an award of costs and attorney's fees as the prevailing party, which the defendant opposes. ^{1/}

Certain costs, including attorney's fees, "may be allowed in a civil action" pursuant to 5 V.I.C. §541 (1967), ^{2/} but the award of attorney's fees to a prevailing party is a matter within the

1/ Both parties treat the award of costs to be governed by the same standards as the award of attorney's fees. The court proceeds on the same assumption.

2/ 5 V.I.C. §541 (1967) states:

§541. Costs Defined

(a) Costs which may be allowed in a civil action include:

- (1) Fees of officers, witnesses, and jurors;
- (2) Necessary expenses of taking depositions which were reasonably necessary in the action;
- (3) Expenses of publication of the summons or notices, and the postage when they are served by mail;
- (4) Compensation of a master as provided in Rule 53 of the Federal Rules of Civil Procedure;
- (5) Necessary expense of copying any public record, book, or document used as evidence in the trial, and
- (6) Attorney's fees as provided in subsection (b) of this section.

(b) The measure and mode of compensation of attorneys shall be left to the agreement, expressed or implied of the parties; but there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorneys's fees in maintaining the action or defenses thereto.

discretion of the court. Collins v. Government of the Virgin Islands, 5 V.I. 622, 636, 366 F.2d 279, 286 (3d Cir. 1966); Smith v. Government of the Virgin Islands, 5 V.I. 536, 539-41, 361 F.2d 459, 471 (3d Cir. 1966); Bevans v. Triumpho, 17 V.I. 144, 148 (Terr. Ct. 1980); Feddersen v. Miller, 17 V.I. 134, 136 (Terr. Ct. 1980).

Defendant argues, however, that the plaintiff did not prevail, but merely recovered nominal damages, and that he is not entitled to recover any costs. Indeed, in an apparent overstatement defendant claims, "In awarding damages of \$1.00 the jury necessarily found that plaintiff was entitled to no damages." The court disagrees. An award of \$1.00 damages is an award of nominal damages, and not an award of no damages. Furthermore, the amount of damages recovered is irrelevant to the award of costs. Even where a plaintiff recovers only nominal damages the court in the exercise of its discretion may award attorney's fees. ^{3/} Milwe v. Cavuoto, 653 F.2d 80 (2d Cir. 1981) (judgment of \$1.00 against law enforcement officer in plaintiff's constitutional claim for civil rights violations is sufficient to support award of attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988 (1976)); Perez v. University of Puerto Rico, 600 F.2d 1, 2

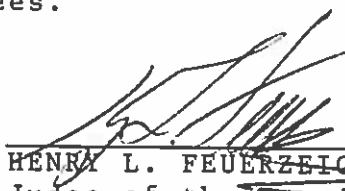
3/ The court finds the authority cited by plaintiff and defendant for contradictory propositions to be inapposite. Ledge Hill Farms, Inc. v. W.R. Grace & Co., 230 F.Supp. 638 (S.D. N.Y. 1964) holds neither, as the defendant contends, that "[w]here liability is found for a plaintiff but only nominal damages awarded, plaintiff is not the prevailing party," nor, as the plaintiff contends, that "a plaintiff, in order to be a prevailing party, must at least be awarded nominal damages." What the court held was that where liability apparently was established but no damages were awarded, defendant was a "prevailing party," but still was entitled only to recover docket fees of \$20. Except for that award, each party was ordered to bear its own costs.

(1st Cir. 1979) (award of nominal damages in a civil rights suit is not grounds for denying attorney's fees, 42 U.S.C. §1988 (1976)) see Carey v. Phipps, 435 U.S. 247, 257 n.11 (1978) (although only nominal damages would be recoverable for justified suspension without due process, students nevertheless would be able to recover attorney's fees). Even a plaintiff's failure to obtain monetary relief does not mean he did not prevail. Nanty v. Barrows Co., 660 F.2d 1327, 1334 n.10 (9th Cir. 1981); Manhart v. City of Los Angeles Department of Water and Power, 652 F.2d 904, 907 (9th Cir. 1981); Williams v. Thomas, 511 F.Supp. 535, 544 (N.D. Tex. 1981). Compare Fernandes v. Limmner, 663 F.2d 619, 638 (5th Cir. 1981) (plaintiff's abandonment of "all claims for money damages" did not amount to a waiver of attorney's fees under 42 U.S.C. §1988 (1976)).

While the cases cited in support of awarding costs to a party who received only nominal damages involve a federal statute authorizing the award of attorney's fees in civil rights actions,^{4/} this court believes the rationale applied is equally applicable in interpreting the language of 5 V.I.C. §541 and holds that a party to whom nominal damages are awarded is a "prevailing party" within the meaning of that statute. Accordingly, upon the plaintiff's submission of an affidavit substantiating its costs in accordance with Lindy Brothers Builders, Inc. v. American Radiator and Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973), the court will

^{4/} 42 U.S.C. §1988 provides, in pertinent part, that "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

award appropriate attorney's fees.



HENRY L. FEUERZEIG
Judge of the Territorial Court